

The Honorable James P. Donohue

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE CLAUSEN LAW FIRM, PLLC, on
behalf of itself and all others similarly situated)

Plaintiff,)

v.)

NATIONAL ACADEMY OF CONTINUING
LEGAL EDUCATION)

Defendant.)

No. 2:10-cv-01023 JPD

ANSWER AND AFFIRMATIVE
DEFENSES

Defendant National Academy of Continuing Legal Education ("NACLE") by and through its counsel of record Lane Powell PC answers the Plaintiff's Complaint by alleging as follows:

NATURE OF THE ACTION

1. Answering paragraph 1, NACLE denies that it sent any unsolicited advertisements via telephone facsimile machine. By way of further answer, NACLE denies that class certification is appropriate. As to the remaining allegations, NACLE denies the same and all inferences to be drawn therefrom.

2. Answering paragraph 2, NACLE denies that it sent any unsolicited advertisements via telephone facsimile machine. By way of further answer, NACLE specifically denies that it violated the Telephone Consumer Protection Act of 1991 ("TCPA"),

ANSWER AND AFFIRMATIVE DEFENSES- 1
NO. 10-1023 JPD

124969.0001/1859773.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

1 47 U.S.C. § 227. NACLE further denies that it violated the Washington Unsolicited
2 Telefacsimile statute, RCW 80.36.540. NACLE further denies that it violated the Washington
3 Consumer Protection Act, RCW 19.86 *et seq.* As to the remaining allegations, NACLE
4 denies the same and all inferences to be drawn therefrom.

5 THE PARTIES

6 3. Answering paragraph 3, NACLE admits that Plaintiff, The Clausen Law Firm,
7 PLLC, is a professional limited liability corporation and a law firm located in Seattle,
8 Washington. NACLE denies that it sent an unsolicited fax or directed the transmission of an
9 unsolicited fax to the Plaintiff. As to the remaining allegations, NACLE denies the same and
10 all inferences to be drawn therefrom.

11 4. Answering paragraph 4, NACLE admits that it is a New York corporation with
12 its principal place of business in West Hempstead, New York. NACLE further admits that it
13 does business in King County, Washington. NACLE specifically denies that it sent any
14 unsolicited faxes to the Plaintiff or to any other individuals or entities. As to the remaining
15 allegations, NACLE denies the same and all inferences to be drawn therefrom.

16 JURISDICTION AND VENUE

17 5. Answering paragraph 5, NACLE admits that this Federal District Court has
18 subject matter jurisdiction over this action. NACLE specifically denies, however, that it
19 committed any tortuous acts. As to the remaining allegations, NACLE denies the same and
20 all inferences to be drawn therefrom.

21 6. Answering paragraph 6, NACLE specifically denies that it sent any unsolicited
22 faxes to any Washington business addresses in King County, Washington. As to the
23 remaining allegations, NACLE denies the same and all inferences to be drawn therefrom.

24 FACTUAL ALLEGATIONS

25 7. Answering paragraph 7, NACLE lacks sufficient information to admit or deny
26 the allegations contained therein. To the extent paragraph 7 states legal conclusions, NACLE

ANSWER AND AFFIRMATIVE DEFENSES- 2
NO. 10-1023 JPD

124969.0001/1859773.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

1 makes no response. As to the remaining allegations, NACLE denies the same and all
2 inferences to be drawn therefrom.

3 8. Answering paragraph 8, NACLE lacks sufficient information to admit or deny
4 the allegations contained therein. Therefore, NACLE denies each and every allegation
5 contained in paragraph 8 and all inferences to be drawn therefrom.

6 9. Answering paragraph 9, NACLE admits that it provides lawyers and law firms
7 with accredited continuing legal education courses throughout the United States. In addition
8 to live seminars, NACLE provides online courses as well as courses via audio CD and CD-
9 ROM. As to the remaining allegations, NACLE denies the same and all inferences to be
10 drawn therefrom.

11 10. Answering paragraph 10, NACLE denies each and every allegation contained
12 therein and all inferences to be drawn therefrom. NACLE specifically denies that it violated
13 the TCPA and/or RCW 80.36.540.

14 11. Answering paragraph 11, NACLE denies each and every allegation contained
15 therein and all inferences to be drawn therefrom.

16 12. Answering paragraph 12, NACLE denies each and every allegation contained
17 therein and all inferences to be drawn therefrom. NACLE specifically denies that class
18 certification is proper in this case. Further, NACLE states that it only sends faxes to
19 recipients who consent to receiving them.

20 13. Answering paragraph 13, NACLE denies that it is liable to the Plaintiff or any
21 members of the putative classes for any alleged damages whatsoever. As to the remaining
22 allegations, NACLE denies the same and all inferences to be drawn therefrom.

23 14. Answering paragraph 14, NACLE denies each and every allegation contained
24 therein and all inferences to be drawn therefrom.

25
26
ANSWER AND AFFIRMATIVE DEFENSES- 3
NO. 10-1023 JPD

124969.0001/1859773.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

CLASS ACTION ALLEGATIONS

15. Answering paragraph 15, NACLE denies that certification of this case as a class action is proper under CR 23(b)(2) and/or CR 23(b)(3) and/or any other provision. NACLE further denies that it sent any unsolicited advertisements to Plaintiff or any members of the putative classes. As to the remaining allegations, NACLE denies the same and all inferences to be drawn therefrom.

16. Answering paragraph 16, NACLE denies that it sent Plaintiff or any members of the putative national class unsolicited facsimiles. NACLE further denies that it violated the TCPA. As to the remaining allegations, NACLE denies the same and all inferences to be drawn therefrom.

17. Answering paragraph 17, NACLE denies that certification of this case as a class action is proper. NACLE further denies that it sent the Plaintiff or any other putative members of the Washington class unsolicited advertisements. As to the remaining allegations, NACLE denies the same and all inferences to be drawn therefrom.

18. Answering paragraph 18, NACLE denies that it sent any unsolicited facsimiles in violation of RCW 80.36.540. NACLE further denies that it violated the Washington Consumer Protection Act. As to the remaining allegations, NACLE denies the same and all inferences to be drawn therefrom.

19. Answering paragraph 19, NACLE denies that certification of this case as a class action is proper under CR 23(b)(2) and/or CR 23(b)(3) and/or any other provision. As to the remaining allegations, NACLE denies the same and all inferences to be drawn therefrom.

19(a). Answering paragraph 19(a), NACLE denies that it sent unsolicited facsimiles to any persons or businesses. NACLE only sends faxes to recipients who consent to receiving them. As to the remaining allegations, NACLE denies the same and all inferences to be drawn therefrom.

ANSWER AND AFFIRMATIVE DEFENSES- 4
NO. 10-1023 JPD

124969.0001/1859773.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

1 19(b)(i)-(viii). Answering paragraph 19(b)(i)-(viii), NACLE denies that certification
2 of this case as a class action is proper. NACLE further denies that there are any questions of
3 law or fact common to the putative National and Washington classes. NACLE further denies
4 that it violated the TCPA, the Washington Consumer Protection Act, and/or RCW 80.36.540.
5 NACLE further denies that it is liable to the Plaintiff or to any member of the putative classes,
6 whatsoever. As to the remaining allegations, NACLE denies the same and all inferences to be
7 drawn therefrom.

8 19(c). Answering paragraph 19(c), NACLE denies that that certification of this case
9 as a class action is proper. NACLE further denies that the claims asserted by the Plaintiff are
10 typical of the members of the putative classes. As to the remaining allegations, NACLE
11 denies the same and all inferences to be drawn therefrom.

12 19(d). Answering paragraph 19(d), NACLE denies that certification of this case as a
13 class action is proper. NACLE further denies that Plaintiff's claims are typical of the
14 members of the putative classes. As to the remaining allegations, NACLE denies the same
15 and all inferences to be drawn therefrom.

16 19(e). Answering paragraph 19(e), NACLE denies that certification of this case as a
17 class action is proper. As to the remaining allegations, NACLE denies the same and all
18 inferences to be drawn therefrom.

19 19(f). Answering paragraph 19(f), NACLE denies that certification of this case as a
20 class action is proper. NACLE further denies that the Plaintiff and the putative class members
21 are entitled to injunctive relief and/or incidental damages. As to the remaining allegations,
22 NACLE denies the same and all inferences to be drawn therefrom.

23 19(g). Answering paragraph 19(g), NACLE denies that certification of this case as a
24 class action is proper. NACLE further denies that the certification of this case as a class action
25 is superior to any other available means for adjudication of this controversy. As to the
26 remaining allegations, NACLE denies the same and all inferences to be drawn therefrom.

ANSWER AND AFFIRMATIVE DEFENSES- 5
NO. 10-1023 JPD

124969.0001/1859773.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

1 19(h). Answering paragraph 19(h), NACLE denies that certification of this case as a
2 class action is proper. NACLE further denies that the Plaintiff or any members of the putative
3 classes have suffered any damages whatsoever. NACLE further denies that it is, or has in the
4 past, violated state or federal law. As to the remaining allegations, NACLE denies the same
5 and all inferences to be drawn therefrom.

6 19(i). Answering paragraph 19(i), NACLE denies that certification of this case as a
7 class action is proper. NACLE further denies that it caused any damages to the Plaintiff or
8 any members of the putative classes whatsoever. As to the remaining allegations, NACLE
9 denies the same and all inferences to be drawn therefrom.

10 COUNT I

11 20. Answering paragraph 20, NACLE denies each and every allegation contained
12 therein and all inferences to be drawn therefrom.

13 21. Answering paragraph 21, no response is required in that paragraph 21 pleads
14 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
15 every allegation contained in paragraph 21 and all inferences to be drawn therefrom.

16 22. Answering paragraph 22, no response is required in that paragraph 22 pleads
17 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
18 every allegation contained in paragraph 22 and all inferences to be drawn therefrom.

19 COUNT II

20 23. Answering paragraph 23, no response is required in that paragraph 23 pleads
21 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
22 every allegation contained in paragraph 23 and all inferences to be drawn therefrom.

23 24. Answering paragraph 24, no response is required in that paragraph 24 pleads
24 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
25 every allegation contained in paragraph 24 and all inferences to be drawn therefrom.
26

ANSWER AND AFFIRMATIVE DEFENSES- 6
NO. 10-1023 JPD

124969.0001/1859773.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

1 25. Answering paragraph 25, no response is required in that paragraph 25 pleads
2 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
3 every allegation contained in paragraph 25 and all inferences to be drawn therefrom. NACLE
4 specifically denies that it is liable to Plaintiff or any putative class members for any damages,
5 whatsoever.

6 26. Answering paragraph 26, no response is required in that paragraph 26 pleads
7 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
8 every allegation contained in paragraph 26 and all inferences to be drawn therefrom.

9 **COUNT III**

10 27. Answering paragraph 27, NACLE denies each and every allegation contained
11 therein and all inferences to be drawn therefrom.

12 28. Answering paragraph 28, no response is required in that paragraph 28 pleads
13 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
14 every allegation contained in paragraph 28 and all inferences to be drawn therefrom.

15 29. Answering paragraph 29, no response is required in that paragraph 29 pleads
16 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
17 every allegation contained in paragraph 29 and all inferences to be drawn therefrom.

18 30. Answering paragraph 30, no response is required in that paragraph 30 pleads
19 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
20 every allegation contained in paragraph 30 and all inferences to be drawn therefrom.

21 31. Answering paragraph 31, no response is required in that paragraph 31 pleads
22 conclusions of law and not allegations of fact. Notwithstanding this, NACLE denies each and
23 every allegation contained in paragraph 31 and all inferences to be drawn therefrom.

24 **RELIEF SOUGHT**

25 In answering Plaintiff's prayer for relief, NACLE specifically denies that it is liable to
26 the Plaintiff or any member of the putative classes for any alleged damages, injunctive relief,

ANSWER AND AFFIRMATIVE DEFENSES- 7
NO. 10-1023 JPD

1 equitable relief, or extraordinary relief, whatsoever. NACLE further denies that it has
2 violated any federal or state law.

3
4 **AFFIRMATIVE DEFENSES**

5 NACLE asserts the following affirmative defenses:

- 6 1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
- 7 2. Plaintiff's state law claims are preempted by applicable federal law and
8 regulations.
- 9 3. Plaintiff's claims are barred under the doctrine of waiver, estoppel, consent
10 and/or unclean hands.
- 11 4. Plaintiff has consented to being contacted via telephone facsimile machine by
12 the Defendant.
- 13 5. Plaintiff's claims are barred by the applicable statute of limitations.
- 14 6. The advertisement allegedly sent to Plaintiff was permitted.
- 15 7. Plaintiff lacks standing to maintain the instant cause of action.
- 16 8. Plaintiff has no private right of action to seek all or some of the relief sought in
17 the Complaint.
- 18 9. Defendant denies that Plaintiff suffered any injury to business or property but
19 to the extent the Plaintiff claims to have suffered damage, Plaintiff failed to mitigate his
20 damages, if any.
- 21 10. Defendant has established and implemented, with due care, reasonable
22 practices and procedures to effectively prevent facsimile solicitations in violation of federal
23 and state law.
- 24 11. Defendant asserts an affirmative defense that it intends to rely upon such
25 defenses as may become legally available hereunder or become apparent during discovery,
26 including without limitation those defenses specific to the statutory law and common law of

ANSWER AND AFFIRMATIVE DEFENSES- 8
NO. 10-1023 JPD

124969.0001/1859773.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

1 the State of Washington and the United States of America which were available at the time
2 the action was commenced or became available during the pendency of this proceeding and
3 thereby reserves the right to amend its answer to assert any such defenses.

4 **PRAYER FOR RELIEF**

5 WHEREFORE Defendant prays that this Court:

- 6 1. Dismiss the Plaintiff's claims and enter a judgment for the Defendant;
7 2. Decline to certify this case as a class action;
8 3. Award Defendant its attorneys' fees and costs; and
9 4. Grant Defendant such other and further relief as may be just and proper.

10 DATED this 30th day of June, 2010.

11 LANE POWELL PC

12 By s/Erin M. Garvey

13 Grant S. Degginger, WSBA No. 15261

14 Barbara J. Duffy, WSBA No. 18885

15 Erin M. Garvey, WSBA No. 42454

16 Attorneys for Defendant National Academy of
17 Continuing Legal Education
18
19
20
21
22
23
24
25
26

ANSWER AND AFFIRMATIVE DEFENSES- 9
NO. 10-1023 JPD

124969.0001/1859773.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

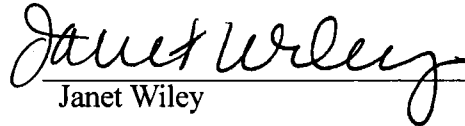
DECLARATION OF SERVICE

I, the undersigned, hereby declare under penalty of perjury under the laws of the United States of America and the State of Washington that on June 30, 2010, I caused to be served a true and correct copy of the foregoing document to be served on the following person(s) in the manner indicated below:

Rob Williamson – roblin@williamslaw.com
Kim Williams – kim@williamslaw.com

- ☒ by **CM/ECF**
☐ by **Electronic Mail**
☐ by **Facsimile Transmission**
☐ by **First Class Mail**
☐ by **Hand Delivery**
☐ by **Overnight Delivery**

DATED this 30th day of June, 2010 at Seattle, Washington.


Janet Wiley

ANSWER AND AFFIRMATIVE DEFENSES- 10
NO. 10-1023 JPD

124969.0001/1859773.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107